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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,639	01/27/2004	Leslie A. Beben	COM002USPT01	1213
7590	08/08/2005		EXAMINER	
Richard C. Emery 4189 Lakewood Avenue White Bear Lake, MN 55110-3925			GREENE, DANA D	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/765,639	BEBEN, LESLIE A.
Examiner	Dana D. Greene	Art Unit 3762

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 27 January 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1 and 2 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1 and 2 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 27 January 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

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**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/24/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

**DETAILED ACTION*****Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 stand rejected under 35 U.S.C. §102(b) as being anticipated by Shapland et al. (US 2003/0199733, hereinafter “Shapland”).

Shapland is considered to disclose:

a mesh grid having crossing strands (see col. 8, para 068, Shapland).

The disclosed jacket is considered to anticipate the claimed mesh grid because both structures are made of a mesh material adaptable to fit any size or shape heart and capable of being placed over the heart within the pericardial space;

a plurality of micronibs attached to the mesh grid (see col. 9, para. 0071, Shapland). The disclosed sutures are considered to anticipate the plurality of micronibs because both are located at the conjunction of individual of the individual parts of the device and contact the exterior surface of the heart to hold the apparatus in place;

a control cable electrically connected to the micronibs (see col. 13, para 0095, Shapland). The disclosed electrical element is considered to anticipate the claimed control cable because both enable the efferent and afferent applications

of electrical stimulus to the heart by electrically connecting an implantable stimulator to the tissue;

a control device electrically connected to the control cable to conduct synchronized electrical energy to separate portions of the heart via the micronibs to augment the normal contraction of the heart (see col. 13, para 0095, Shapland). The disclosed electrical element is considered to anticipate the claimed control device because both provide the necessary electrical stimulation synchronized with the normal contraction of the heart.

With reference to claim 2, Shapland is considered to disclose:

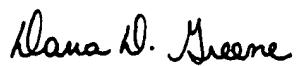
the apparatus of claim 1 further comprising drawstrings and purse strings to adjust the size of the mesh grid to conform to the external contours of the heart (see col. 3, para.0020, Shapland). The disclosed adjustment mechanism is considered to anticipate the claimed drawstrings and purse strings because all components make it possible for the apparatus to be adjusted to fit the varying external contours of individually shaped hearts.

### ***Conclusion***

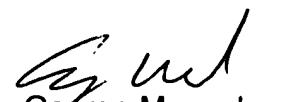
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dana D. Greene whose telephone number is (571) 272-7138. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dana D. Greene



George Manuel  
Primary Examiner